

RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT  
Serial Number: 09/975,756  
Title: COSMETIC PRODUCT CONTAINING ACRYLATES

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### REMARKS

This responds to the Office Action mailed on May 4, 2005, and the references cited therewith.

Claims 1-2 are amended, and claims 4-5, 8 and 13 are canceled, as a result, claims 1-3, 6-7, 9-12 and 14-26 are now pending in this application.

#### §112 Rejection of the Claims

Claims 1-12 and 14-26 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the limitation "wherein the film-forming agent has a concentration over 20 percent by weight" is not supported in the originally filed specification or claims.

The Examiner acknowledges that the specification does provide support for the concentration range claimed by noting that the specification describes a range of 0.01 to 80% and includes a specific example describing a film forming agent having a concentration of 24.5%, which is over 20 percent by weight, as is claimed. Both of these features provide support for the concentration range claimed. What is claimed is not only a film-forming agent has a concentration over 20 percent by weight, but also a solvent as claimed to produce a gel having an elasticity that is 4 to 5 times greater than the elasticity of the film-forming agent alone and the gel has a softness greater than the film-forming agent.

The Applicant respectfully requests the Examiner to provide more information and support regarding this ground for rejection. The Examiner's own statements acknowledge that there is support in the specification for the concentration range claimed.

Claims 1-12 and 14-26 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner has objected to the terms "acrylate derivate" and "volatile silicone derivate" because "it is not clear what compounds would be encompassed by the terms 'acrylate derivate' and volatile silicone derivate". The Applicant disagrees for the reasons set forth. The term "volatile silicone derivate" is a term known to anyone skilled in the cosmetics field. "Volatile silicone derivates" are cosmetic oils which are easily vaporizable. Known examples are compounds with a

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short carbon chain e.g. hexamethyldisiloxane or rings with 4 or 5 Si atoms e.g. cyclotetrasiloxane, cyclopentasiloxane (cf. e.g. Fey, Otte *Worterbuch der Kosmetik*, 4<sup>th</sup> ed., Stuttgart 1997, page 254, or Schrader, *Grundlagen und Rezepturen der Kosmetik*, Heidelberg 1989, pages 28, 29. English translations accompany this response.

§103 Rejection of the Claims

The Examiner has rejected claims 1-12 and 14-26 as being "unpatentable over US Patent 5,804,173 ('173)." The Applicant disagrees for the reasons set forth. The '173 patent refers to completely different copolymers from those claimed in the application. The '173 patent describes a copolymer complex comprising:

- (1) a copolymer from A and B monomers;
- (2) a complexing fatty acid, and
- (3) a volatile hydrophobic solvent (see col. 2, 1, 13-19).

The monomer A in the '173 patent is :

t-butyl acrylate  
t-butyl methacrylate  
t-butylstyrene  
t-ethylhexyl methacrylate

The monomer B in the '173 patent is:

NN-dialkylaminoethyl(meth)acrylate  
NN-dialkaminopropyl(meth)acrylate  
NN-dialkylaminopropyl(meth)acrylamide

In the claimed invention, the monomers, after restriction of claim 1 to ethyl acrylate/methylmethacrylate copolymers, are ethyl acrylate and methyl methacrylate. Both are different from the monomers described in the '173 patent. Furthermore, neither of the copolymers is complexed with a fatty acid.

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"The test is not whether each difference individually is obvious; rather, it is whether the claimed invention as a whole is obvious." In re Buehler (CCPA 1975) 515 F2d 134, 185 USPC 781.

The claimed invention is a copolymer complex that includes a copolymer and a fatty acid that has excellent temporary styling for hair and improved "wash off" features. The formulation described in the '173 patent describes copolymers that are different from what is claimed and a product that is water resistant and has no wash-off characteristics.

The Examiner's reference of column 24 of the '173 patent is to a thickener, starting with column 23, line 39. The thickeners are crosslinked polymers, column 23, lines 40/41, and are described in greater detail in column 24, lines 5ff. Furthermore, ethacrylic acid is mentioned as a possible monomer for the thickener, but methylmethacrylic acid is not mentioned.

The '173 patent does not teach a use of the copolymer ethyl acrylate/methyl methacrylate. Furthermore, the claimed acrylate derivative is different from the thickener described in the '173 patent. Applicant asserts it was not obvious for a person skilled in the art to use the teachings of the '173 patent for a gel claimed herein.

Moreover, the '173 patent does not teach a use of a non-ionic emulsifier for emulsifying the copolymer. Column 24, lines 60-64 of the '173 patent describes its copolymer as acting only as a carrier, as described in column 24, lines 60-64.

Furthermore, the Applicant could not find the Examiner's support for the '173 patent teaching the "copolymer and around 60% cyclomethicone." The examples in the '173 patent describe concentrations of 10.0% and 7.0%.

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### CONCLUSION

In accordance with 37 CFR 1.173(b), only the non-compliant section of Applicant's previously-submitted Amendment and Response has been included in this response.

Applicant respectfully submits that the Examiner withdraw the non-compliant status and examine the response as appropriate.

The Examiner is invited to telephone Applicant's attorney at (612) 373-6976 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 9 Nov 2005

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The undersigned hereby certifies that this correspondence is being transmitted by facsimile (FAX NO. 571-273-8300) to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 9th day of November, 2005.

Name

CANDIS TRENDELL

Signature

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